JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE

CHESTER G. VERNIER AND WILLIAM G. HALE.

FROM WILLIAM G. HALE.

CONSTITUTIONAL LAW.

People v. *Jones,* 117 N. E. 417 (Ill.). *Intoxication at railroad station.*

Hurd's Rev. Statutes, 19 15-16, c. 38, par. 539, providing for the punishment of any person who drinks intoxicants, or who is intoxicated, in or about any railroad station or platform, is not violative of the Fourteenth Amendment of the federal Constitution, or the Constitution of Illinois (Art. 2, sec. 32, 11) as establishing an arbitrary classification or the provision (Art. 4, sec. 22) against the passage of local or special laws. The Court cannot say that making a distinction between intoxication at railroad stations and elsewhere is arbitrary. It was the judgment of the Legislature that there was a reasonable distinction between the two. The Court quotes from Missouri, Kansas & Texas Ry. Co. v. May (194 U. S. 267) as follows: "When a State Legislature has declared that in its opinion policy requires a certain measure, its action should not be disturbed by the courts under the Fourteenth Amendment, unless they can see clearly that there is no fair reason for the law that would not require with equal force its extension to others whom it leaves untouched. * * * Great constitutional provisions must be administered with caution. Some play must be allowed for the joints of the machine, and it must be remembered that Legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts."

DISPENSING DRUGS.

People v. *Hoyt,* 166 N. Y. S. 953. *Construction of statute. Delivery of heroin by physician to patient's agent.*

The defendant, a physician, was convicted of violating the Public Health Law, sec. 246, as added by Laws 1914, c. 363, and amended by Laws 1915, c. 327. It was held, in reversing the case (1) that the physician is not required by the law to examine his patient each time anew before supplying him with a narcotic drug as a medicine, an examination within a reasonable time before being sufficient, and (2) that it is not a violation of the law to deliver the drug to the patient's agent—in this case the patient's wife.

DISORDERLY HOUSE.

Commonwealth v. *La Pointe,* 117 N. E. 345 (Mass.). *Construction of the statute.*

The defendant was convicted of knowingly permitting a building under her control to be used for purposes of prostitution. The complainant in the case had charged that the defendant "did knowingly permit" the building to be used for such purposes. The Court instructed the jury that if the defendant rented the premises, with knowledge that they were to be so used, they might find the defendant guilty. The statute under which the prosecution was

brought provided for the punishment of one who owns or controls a building and (1) knowingly lets it to be used for purposes of prostitution, or (2) knowingly permits it to be so used, or (3) after due notice of such use omits to eject the tenant. *Held,* that the instruction given was erroneous since it permitted conviction under the first provision of the statute, whereas the defendant was charged specifically with the violation of the second provision. The acts specified are separate and distinct, and one does not include the other and by virtue of constitutional guaranties, "No subject shall be held to answer for any crime or offense, until the same is fully and plainly, substantially and formally, described to him."

EVIDENCE.

Patterson v. *State,* 117 N. E. 169 (Ohio). *Larceny of automobile. Proof of other thefts.*

Defendant was indicted for stealing the automobile of one W. as the aider and abbetor of one X. The evidence showed that defendant and X. were co-operating in the business of stealing automobiles. Testimony was given and objected to that they had also stolen the car of one C. The objection was based on the ground that defendant had previously been tried and acquitted of the charge of stealing C.'s car. *Held*: This evidence properly received. The stealing of all the cars referred to, including C.'s car, was part of a common scheme or plan. Testimony concerning the theft of C.'s car does not violate defendant's right not to be put in jeopardy twice for the same offense.

LARCENY.

People v. *Bremreauer,* 116 N. Y. S. 801. *"Possession." Variance.*

The defendant was a salesman for the Gurney Ball-Bearing Company. Before leaving the company's employ, he took from the office certain valuable blue prints. Upon an examination of the evidence it was held that the defendant at most had the "custody" of the prints, while the "possession" was in the master, and that where the defendant carried them away with felonious intent he had committed the crime of larceny at common law. It was also held that since the indictment charged the defendant with common law larceny, he could not be convicted of larceny by false pretenses or by embezzlement under the Penal Law, sec. 1290.

MANSLAUGHTER.

People v. *Falkovitch,* 117 N. E. 398 (Ill.). *Involuntary manslaughter by reckless driving of an automobile.*

The defendant was charged with "unlawfully, feloniously, recklessly, and negligently" driving "motor-vehicle" over the deceased. The accident happened on one of the main thoroughfares of the City of Rock Island. The rate of speed was stated to be 25 miles an hour. Three grounds of error were alleged: (1) That the lethal instrument was not described with sufficient definiteness; (2) that the killing was not alleged to have been wilfull, and (3) that there was a failure to set forth the specific acts relied upon as constituting the crime. The judgment of conviction was affirmed.

The following points made in the decision are of interest: (a) "There are no words or special provisions of our statutes with reference to manslaughter, either in the definition of the crime itself or elsewhere in the statute. that

require that the indictment shall charge that the killing was both felonious and willful, although it is common practice to employ both words in drawing indictments."

(b) "Motor vehicle" is a proper designation of an automobile. The instrument of harm need not be more specifically described.

(c) It is provided by statute that "No person shall drive a motor vehicle or motor bicycle upon any public highway in this State at a speed greater than is reasonable and proper, having regard to the traffic and the use of the way or so as to endanger the life or limb or injure the property of any person."

It is further provided in the statute that a rate of speed in excess of 10 miles an hour in the business district or 15 miles in a residence district of a city or village shall be prima facie evidence of unreasonable speed.

It was error for the Court to instruct the jury that proof of a rate of speed in excess of that prescribed by statute would be proof of negligence, since by the statute it is made only prima facie negligence. But it was harmless error, because it was otherwise made clear that the jury must be convinced beyond a reasonable doubt that the defendant was running his automobile in reckless disregard of human life and that "negligence, to become criminal, must be reckless, wanton, and of such a character as shows an utter disregard of the safety of others under circumstances likely to cause injury." Moreover the facts in this case clearly support the verdict.

FROM C. G. VERNIER.

APPEAL.

People v. *Mooney,* Calif., 167 Pac. 696. *Consideration of stipulated facts.*

Under Const., art 6, sec. 4, limiting the Supreme Court's jurisdiction on appeal from the Superior Courts to questions of law alone, where judgment of death has been rendered, evidence discovered after appeal by the defendant from a conviction of murder cannot be considered by the Supreme Court.

Const., art 6, sec 4½, providing that the Supreme Court may not set aside a judgment or grant a new trial for any error of law, "unless, after an examination of the entire cause, * * * the Court shall be of the opinion that the error complained of has resulted in a miscarrage of justice," further limits the power of the Supreme Court; the words "entire cause" meaning only the cause as presented by the record.

Stipulations of the Attorney General with one appealing from a conviction of murder do not give this court authority to consider evidence discovered after the appeal, or any matter outside the record.

ATTEMPT.

Cole v. *State,* Okla., 166 Pac. 1115. *Is solicitation to commit adultery an attempt?*

Mere solicitation to commit adultery cannot be prosecuted under the law as an attempt to commit adultery. An information which charges only a solicitation to commit adultery does not state facts sufficient to constitute a public offense under he attempt statute.

Leverett v. *State,* Ga., 93 S. E. 232. *Attempt to manufacture intoxicating liquor.*

(a) An instruction by the court, authorizing the jury to find the accused

guilty of an attempt to commit the crime of manufacturing alcoholic, spirituous, malt, and intoxicating liquors, was proper.

(b) There was some testimony tending to show that the crime had been not only attempted, but consummated; but, despite the inhibition of the Penal Code against a conviction of an attempt to commit an offense, when it shall appear that the offense attempted was actually perpetrated by the defendant in pursuance of such attempt (Penal Code of 1910, sec. 19), and notwithstanding the evidence that a considerable quantity of whisky was found near the still, which the accused was apparently attempting to operate, the jury were not compelled to conclude that he had assisted in the manufacture of the completed product, but was authorized to find that he was then attempting to manufacture intoxicants, and may have entertained a reasonable doubt that he had been interested in the manufacture of the completed product discovered, or may have believed that he had but recently connected himself with the illicit enterprise, and was attempting for the first time and with all the necessary equipment to engage in the manufacture of intoxicants.

CONSTITUTIONAL LAW.

State v. *Fabbri,* Wash. 167 Pac. 133. *Prohibiting manufacture of liquor for personal use.*

Laws 1915, p. 3, sec. 4, making an offense the manufacture of intoxicating liquor by any person solely for his own personal use, is not violative of Const. U. S. Amend. 14, providing that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, and that no state shall deprive any person of life, liberty, or property without due process of law, etc., or of Const. Wash. art. 1, secs. 3 and 7, providing that no person shall be deprived of life, liberty, or property without due process of law, and that no person shall be disturbed in his prvate affairs or his home invaded without authority of law.

Valdez v. *United States,* 37 Sup. Ct. Rep. 725. *Confronting with witnesses —View of scene of crime.*

An inspection of the scene of a homicide, made by the trial judge in the presence of counsel for the accused, but in the absence of the accused himself, did not infringe the right to "meet the witnesses face to face," secured to an accused by the Act of July 1, 1902 (32 Stat. at L. 692, chap. 1369), sec. 5, enactng a Bill of Rights for the Philippine Islands, where the judge, in his inspection of the scene, was not improperly addressed by anyone, and did no more than visualize the testimony of the wtnesses.

Clarke, J., and White, C. J., dissenting.

State v. *Owen,* Wash., 166 Pac. 793. *Legalty of indictment under initiative statute.*

Whether amendment 7 to the state constitution, providing for the initiative and referendum, is in violation of Const. U. S. art. 4, sec. 4, guaranteeing to every state a republican form of government, is a federal question, and the federal Supreme Court has held the constitutional guaranty is a political matter beyond jurisdiction of courts.

The claim that amendment 7 to the state constitution is in violaton of Const. U. S. art. 4, sec. 4, guaranteeing to every state a republican form of government, has been foreclosed by Congress, to which the matter is ex-

clusvely committed by admitting thereto senators and representatives of this state since the adoption of the amendment.

EXTRADITION.

In re Whittington, Calif., 167 Pac. 404. *Is one compelled to leave the state a fugitive?*

One is not a fugitive from justice from the state of Texas, so as to be subject to extradition thereto, where, having been arrested in that state for an offense there committed, he was with permission of its authorities taken on process under extradition to the state of California, there to answer to a charge of having committed a crime, though the latter charge was later dismissed.

FALSE PRETENSES.

Knepper v. *People,* Colo., 167 Pac. 779. *Note in hands of maker: "Other valuable thing."*

Under Rev. St. 1908, sec. 1849, providing that, if any one knowingly and designedly by false pretenses obtains from any person any chose in action, money, goods, or "other valuable thing whatever" with intent to defraud, the offender shall be deemed a cheat, and in view of sec. 5540, defining "personal property" to include everything the subject of ownership, whether tangible or intangible, a note reduced to possession by a swindler is "personal property," and a thing of value even in the hands of the maker.

Garrigues, J., dissenting.

GRAND JURY.

People v. *Lensen,* Calif., 167 Pac. 406. *May women serve on grand jury?*

The word "men," as used in Code Civ. Proc. sec. 190, defining a jury as "a body of men," and section 192, providing that a grand jury is "a body of men," did not include women, notwithstanding Pen. Code, sec. 7, providing that words used in the masculine gender include feminine; hence an indictment presented by a grand jury of 11 men and 8 women, prior to the amendments approved May 29, 1917 (St. 1917, p. 1282), was not "found as prescibed in this Code," within the meaning of Pen. Code, sec. 995, providing that such indictments be set aside.

IMMUNITY.

People v. *Fryer,* Calif., 167 Pac. 382. *Construction of Immunity Statute.*

Under Pen. Code, sec. 1324, providing for immunity to a witness whose testimony may incriminate himself where defendant, charged with murder, had been called as a witness on preliminary examination of another, and had been sworn and testified, incriminating himself, without a word of instruction as to his rights, the statute not having been read to him, defendant was thereafter immune from prosecution.

Angelloti, C. J., and Lawlor and Lorigan, J. J., dissenting. The statute reads: "'No . . . person shall be exempt from indictment, presentment by information, prosecution or punishment for the offense with preference to which he may have testified as aforesaid, or for or on account of any transaction, matter or thing concerning which he may have testified as aforesaid, or produced evidence, documentary or otherwise, where such person so testifying or so producing evidence, documentary or otherwise, does so

voluntarily, or when such person so testifying or so . . . fails to ask to be excused from testifying or so producing evidence, on the ground that his testimony or such evidence, documentary or otherwise, may incriminate himself, but in all such cases, the testimony or evidence, documentary or otherwise, so given may be used in any criminal prosecution or proceeding against the person so testifying or producing such evidence, documentary or otherwise.

"'Any person shall be deemed to have asked to be excused from testifying or producing evidence, documentary or otherwise, under this section, unless before any testimony is given or evidence, documentary or otherwise, is produced by such a witness, the judge, foreman or other person presiding at such trial, hearing, proceeding or investigation, shall distinctly read this section of this code to such witness, and the form of the objection by the witness shall be immaterial, if he in substance makes objection that his testimony or the production of such evidence, documentary or otherwise, may incriminate himself, and he shall not be obliged to object to each question, but one objection shall be sufficient to protect such witness from prosecution for any offense concerning which he may testify, or for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, upon such trial, hearing, proceeding or investigation.'"

INDICTMENT AND INFORMATION.

People v. *Griesheimer,* Calif., 167 Pac. 521. *Failure to allege cause in charge of false pretenses.*

Under Const., art. 6, sec 4½, providing that no judgment shal be seta aside or new trial granted for error as to pleading unless the court is of the opinion thit it resulted in a miscarriage of justice, an alleged defect in an information, charging the crime of obtaining money by false pretenses, in that it failed to show the causal connection between the pretense and the surrender of the money, is not a ground for reversal.

Henshaw, Melvin and Lorigan, J. J., dissenting.

INSTRUCTIONS.

State v. *Turnage,* S. Car., 93 S. E. 182. *"Leaving community" as ground for inferring guilt.*

In a murder case, "leaving a community" and "flight" are not synonymous words, since "flight" is the evading of the course of justice, by a man's voluntarily withdrawing himself, and where a defendant left the community after a crime, but denies that he was evading arrest, flight or evasion of arrest is a question for the jury; hence it was error to charge that an inference might be drawn against the defendant from the fact that he left the community.

Hydrick and Gage, J. J., dissenting.